

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
ASSIGNED ON BRIEFS MAY 24, 2001

GARY WILLIAM HOLT v. DENNIS YOUNG, ET AL.

**Direct Appeal from the Circuit Court for Franklin County
No. 10, 956; The Honorable Thomas Graham, Judge**

No. M2000-00243-COA-R3-CV - Filed October 25, 2001

This appeal arises from the seizure of the Appellant's car and personal possessions by the Appellees. The Appellant filed a complaint against the Appellees in the Circuit Court of Franklin County, alleging civil rights violations, fraud, negligence, and perjury under the laws of the State of Tennessee. The complaint also alleged violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1986. The Appellees filed motions to dismiss for failure to state a claim upon which relief can be granted. The trial court entered an order granting the Appellees' motions to dismiss.

The Appellant appeals the order entered by the Circuit Court of Franklin County granting the Appellees' motions to dismiss. For the reasons stated herein, we affirm the trial court's

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY KIRBY LILLARD, J., joined.

Gary William Holt, Ft. Worth, TX, *pro se*

P. Brocklin Parks, J. Russell Farrar, Nashville, TN, for Appellee Dennis Young

William E. Godbold, III, Charles W. Poss, Chattanooga, TN, for Appellee Tim Fuller

OPINION

I. Facts and Procedural History

The Appellant, Gary William Holt ("Mr. Holt"), is an inmate in the Federal Medical Correctional Center in Fort Worth, Texas. In February, 1996, authorities in Franklin County, Tennessee charged Mr. Holt with several counts of aggravated armed robbery, car jacking, and

aggravated assault.¹ On March 18, 1996, the Appellees, Chief Dennis Young of the Estill Springs Police Department (“Mr. Young”), and Captain Tim Fuller of the Franklin County Sheriff’s Office (“Mr. Fuller”), seized Mr. Holt’s car which was in the possession of the United States Marshal Service. The car was allegedly used during the commission of the aggravated armed robberies. Mr. Young and Mr. Fuller also seized Mr. Holt’s personal possessions within the car. Prior to the seizure of the car and personal possessions, Mr. Young and Mr. Fuller presented a notice of seizure to Mr. Holt’s wife, Stephanie Holt (“Mrs. Holt”), who was confined to the Franklin County Jail. The notice of seizure was signed by Mrs. Holt on March 18, 1996 and filed in the Circuit Court of Franklin County on March 20, 1996. Mr. Young and Mr. Fuller state that no claims were made for the car and its contents and that, pursuant to section 40-33-109 of the Tennessee Code, the car and its contents were forfeited to the seizing authorities. Mr. Holt claims that the car was titled solely in his name and that Mr. Young and Mr. Fuller should have served the notice of seizure upon him rather than Mrs. Holt.

On May 26, 1998, Mr. Holt filed a complaint against Mr. Young and Mr. Fuller in the Circuit Court for Franklin County, alleging civil rights violations, fraud, negligence, and perjury under the laws of the State of Tennessee. The complaint also alleged violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1986. The complaint sought actual damages in the amount of \$3,000.00 for the loss of the car, actual damages in the amount of \$7,000.00 for the loss of the personal property within the car, nominal damages in the amount of \$1,000.00 for pain and anguish, and punitive damages in the amount of \$1,000,000.00. On July 2, 1998, Mr. Young filed an answer. On November 4, 1998, Mr. Fuller filed a motion to dismiss for failure to state a claim upon which relief can be granted. As grounds for the motion to dismiss, Mr. Fuller claimed that Mr. Holt’s complaint was barred by the applicable statute of limitations. On November 25, 1998, Mr. Fuller filed a supplement to his motion to dismiss, adopting by reference Mr. Young’s motion for judgment on the pleadings and memorandum of law in support thereof.

On February 23, 1999, the trial court entered an order partially granting Mr. Young’s and Mr. Fuller’s motions with respect to the following claims: (1) the claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1986 were barred by the one-year statute of limitations under section 28-3-104(a) of the Tennessee Code; (2) the claim for punitive damages was barred by section 40-33-215(c) of the Tennessee Code; (3) the claim of fraud was dismissed because the claim was conclusory and not plead with the specificity required by Rule 9.01 of the Tennessee Rules of Civil Procedure; (4) the claim of perjury was dismissed because it did not give rise to a civil cause of action; (5) the claim of civil rights violations was dismissed because Mr. Holt failed to specify what civil rights had been violated; and (6) the claim of negligence was dismissed because the claim was subsumed by and limited by section 40-33-215(c). The trial court denied Mr. Young’s and Mr. Fuller’s motions with respect to the wrongful seizure claim and damages resulting therefrom. (TR v. 1 pg. 59). The trial court limited the claim in scope, however, to the requirements of section 40-33-215(c). (*Id.*).

¹Mr. Holt claims that all of these charges were dismissed by the Criminal Court of Franklin County on August 21, 1998 and in November, 1998.

On October 12, 1999, Mr. Young filed a motion to dismiss the claim brought under section 40-33-215(c). Mr. Young noted that section 40-33-215(c) took effect on October 1, 1998. Mr. Young argued that because the seizure of Mr. Holt's car predated the enactment of section 40-33-215(c), the statute could not form the basis of an action for damages. On October 20, 1999, Mr. Fuller filed a motion to dismiss, adopting by reference Mr. Young's motion to dismiss. On January 10, 2000, the trial court entered an order granting Mr. Young's motion to dismiss and amending its previous order. This appeal followed.

II. Law and Analysis

The following two issues are presented for our review:

- (1) whether the trial court erred by dismissing the claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1986 as barred by the applicable statute of limitations; and
 - (2) whether the trial court erred by dismissing the remaining claims for failure to state a claim upon which relief can be granted;
- We will address each issue in turn.

The first issue presented for our review is whether the trial court erred by dismissing the claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1986 as barred by the applicable statute of limitations. Mr. Fuller filed a motion to dismiss Mr. Holt's claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1986 as barred by the one-year statute of limitations. Mr. Fuller argued that Mr. Holt failed to meet the one-year statute of limitations because Mr. Holt filed his complaint on May 29, 1998, more than two years after his car was seized and forfeited pursuant to section 40-33-101 of the Tennessee Code. The trial court granted Mr. Fuller's motion and found that Mr. Holt's claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1986 were barred by the one-year statute of limitations under section 28-3-104(a) of the Tennessee Code.

In Tennessee, federal civil rights actions are governed by the one-year personal injury statute of limitations under section 28-3-104(a). See Hill v. State of Tennessee, 868 F. Supp. 221, 223 (M.D. Tenn. 1994). Section 28-3-104(a) provides:

- (a) The following actions shall be commenced within one (1) year after the cause of action accrued:
 - (1) Actions for libel, for injuries to the person, false imprisonment, malicious prosecution, breach of marriage promise;
 - (2) Actions and suits against attorneys or licensed public accountants or certified public accountants for malpractice, whether the actions are grounded or based in contract or tort;
 - (3) Civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes; and
 - (4) Actions for statutory penalties.

TENN. CODE ANN. § 28-3-104(a) (2000).

We must decide when a cause of action accrues in order to determine the time at which the one-year statute of limitations begins to run.

In the case at bar, Mr. Holt argues that his cause of action had not accrued because his car had not been disposed of, or forfeited by operation of law, at the time he filed his complaint. Mr. Holt relies upon Hill v. State of Tennessee, 868 F. Supp. 221 (M.D. Tenn. 1994), for the proposition that a cause of action does not accrue for purposes of the statute of limitations until a disposition has been made on the property at issue. In Hill, Mr. Hill was arrested by Nashville/Davidson County police officers for possession of marijuana. See id. at 222. The police officers seized Mr. Hill's car pursuant to section 53-11-451 of the Tennessee Code. See id. A forfeiture hearing was held. See id. at 222-23. Upon completion of the forfeiture hearing, the judge found that the car should be forfeited to the seizing municipality. See id. Mr. Hill appealed the ruling to the Chancery Court of Davidson County. See id. at 223. The chancery court reversed the judge's ruling. See id. The State of Tennessee appealed the chancery court's ruling to the Tennessee Court of Appeals. See id. The court of appeals reversed the chancery court's ruling and reinstated the forfeiture. See id. Mr. Hill requested permission to appeal to the Tennessee Supreme Court. See id. The supreme court denied the permission to appeal on March 22, 1993. See id.

On October 22, 1993, Mr. Hill filed a 42 U.S.C. § 1983 action in the United States District Court for the Middle District of Tennessee challenging the State of Tennessee's forfeiture of Mr. Hill's car. See id. The State of Tennessee filed a motion to dismiss alleging that the action was barred under the one-year statute of limitations. See id. The State of Tennessee argued that the action accrued and the statute of limitations began to run when the car was seized on July 5, 1990. See id. The district court found that Mr. Hill's action did not accrue until March 22, 1993, the date on which the final appeal was denied. See id. at 224. The district court stated:

The Supreme Court has made clear that "a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision" with regard to the taking of the property. Until such final ruling is rendered, it is not certain that plaintiff has a claim. . . . In this case, Plaintiff sought judicial review of the forfeiture of his property . . . Plaintiff's claim in this Court was not ripe until he received notice that his request to appeal had been denied by the state supreme court. It was not until that time that he knew the forfeiture of his [car] was "permanent." Because this Court finds that Plaintiff's cause of action began to accrue on March 22, 1993, Plaintiff's Complaint, which was filed on October 22, 1993, is not barred by the one-year statute of limitations.

Id.

We find the Hill decision distinguishable from the situation in the case at bar. In Hill, Mr. Hill's car was seized and forfeited pursuant to section 53-11-451. Mr. Hill's car was forfeited as a result of a forfeiture hearing. There was not a final decision with regard to the forfeiture of the property until, following a series of appeals, the supreme court denied Mr. Hill's permission to appeal. As stated by the Hill court, Mr. Hill did not know that his forfeiture was permanent until the supreme court denied his permission to appeal. At that point, Mr. Hill's claim accrued. Mr. Hill had one year from the time of the final decision with regard to the forfeiture of the property, the supreme court's decision, to file a 42 U.S.C. § 1983 claim against the State of Tennessee.

In the case at bar, the applicable forfeiture statute is section 40-33-101, et seq. of the Tennessee Code ("the forfeiture statute"). Section 40-33-107(3) of the Tennessee Code provides that "[a]ny person claiming any conveyance so seized may, within fifteen (15) days after receipt of notification of seizure, file with the court a claim in writing, requesting a hearing and stating such person's interest in the conveyance seized." TENN. CODE ANN. § 40-33-107(3) (1997). If the person fails to file a claim, "such conveyance shall be forfeited without further proceedings and the same shall be sold or disposed of as herein provided. The above procedure is the sole remedy of any claimant." TENN. CODE ANN. § 40-33-109 (1997). Mr. Holt argues that the car was never forfeited by operation of law because he was never provided a notice of seizure in accordance with the forfeiture statute. Section 40-33-203 of the Tennessee Code states, in pertinent part:

(a) Upon effecting a seizure, the seizing officer shall prepare a receipt titled a Notice of Seizure. The notice of seizure shall be a standard form promulgated by the applicable agency. The applicable agency may adopt an existing notice of seizure form.

(b)(1) Upon seizure of a conveyance, the seizing officer shall make reasonable efforts to determine the owner or owners of the property seized as reflected by public records of titles, registrations, and other recorded documents.

* * *

(c) Upon the seizure of any personal property subject to forfeiture pursuant to section 40-33-101 of this part, the seizing officer shall provide the person found in possession of the property, if known, a receipt titled a Notice of Seizure. Such notice of seizure shall contain the following:

- (1) A general description of the property seized and, if the property is money, the amount seized;
- (2) The date the property was seized and the date the notice of seizure was given to the person in possession of the seized property;
- (3) The vehicle identification number (VIN) if the property seized is a motor vehicle;

- (4) The reasons the seizing officer believes the property is subject to seizure and forfeiture;
- (5) The procedure by which recovery of the property may be sought, including any time periods during which a claim for the recovery must be submitted; and
- (6) The consequences that will attach if no claim for recovery is filed within the applicable time period.

TENN. CODE ANN. § 40-33-203 (1994).

Mr. Young and Mr. Fuller presented the notice of seizure to Mrs. Holt rather than Mr. Holt. Mrs. Holt signed the notice of seizure, and Mr. Young and Mr. Fuller filed the notice of seizure in the Circuit Court of Franklin County. Mr. Holt claims that Mr. Young and Mr. Fuller should have presented the notice of seizure to him because he was the sole owner of the car. Mrs. Holt, however, signed the application for Certificate of Title and Registration for the car as the owner of the car. We find that the presentation of the notice of seizure to Mrs. Holt satisfied the forfeiture statute. Mr. Young and Mr. Fuller could reasonably believe that Mrs. Holt was the owner of the car because Mrs. Holt signed a public title and registration as the owner of the car. Further, the intent of the forfeiture statute was satisfied inasmuch as our review of the record shows that Mr. Holt had inquiry notice that his car had been seized.

Neither Mr. Holt nor Mrs. Holt filed a claim for the car within fifteen days after receipt of notification of seizure. In accordance with the forfeiture statute, Mr. Holt's car was forfeited as a matter of law fifteen days following receipt of notification of seizure. At that point, there was a final decision with regard to the forfeiture of the property such that Mr. Holt's claim began to accrue. Mr. Holt had one year from the time of the final decision with regard to the forfeiture of the car to file 42 U.S.C. § 1983 and 42 U.S.C. § 1986 claims against Mr. Young and Mr. Fuller. Because Mr. Holt filed his claims over two years after the final decision with regard to the forfeiture of the car, Mr. Holt's claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1986 were barred by the one-year statute of limitations. Accordingly, we affirm the trial court's decision dismissing the claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1986 as barred by the applicable statute of limitations.

The second issue presented for our review is whether the trial court erred by dismissing the remaining claims for failure to state a claim upon which relief can be granted. The trial court dismissed Mr. Holt's claims for fraud, perjury, state civil rights violations, negligence, and wrongful seizure under the forfeiture statute for failure to state a claim upon which relief can be granted. We will examine each of Mr. Holt's claims in turn.

First, the trial court dismissed Mr. Holt's claim for fraud. The trial court found that the claim for fraud was conclusory and not plead with the specificity required by Rule 9.02 of the Tennessee Rules of Civil Procedure. We agree. "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." TENN. R. CIV. P. 9.02. Mr. Holt's

complaint failed to plead the claim for fraud with the specificity required by Rule 9.02. Accordingly, we affirm the trial court's decision dismissing the claim for fraud.

Second, the trial court dismissed Mr. Holt's claim for perjury. The trial court found that the claim for perjury failed to give rise to a civil cause of action. We agree. "The law in this jurisdiction does not recognize a civil action for perjury or conspiracy to commit perjury." Whitaker v. Whirlpool Corp., 32 S.W.3d 222, 231 (Tenn. Ct. App. 2000) (quoting Lackey v. Carson, 886 S.W.2d 232, (Tenn. Ct. App. 1994)). Mr. Holt cannot state a civil claim for perjury. Accordingly, we affirm the trial court's decision dismissing the claim for perjury.

Third, the trial court dismissed Mr. Holt's claim for state civil rights violations. The trial court found that the claim for state civil rights violations failed to specify what civil rights had been violated. We agree. Mr. Holt's complaint made a conclusory statement that his state civil rights had been violated. Mr. Holt failed to specify what civil rights were violated. We find that the complaint failed to duly apprise Mr. Young and Mr. Fuller of the claims for state civil rights violations brought against them. Accordingly, we affirm the trial court's decision dismissing the claim for state civil rights violations.

Fourth, the trial court dismissed Mr. Holt's claim for negligence. The trial court found that the claim for negligence had been subsumed by the forfeiture statute. We agree. Mr. Holt claimed that Mr. Young and Mr. Fuller were negligent in their failure to provide Mr. Holt with a notice of seizure under the forfeiture statute. In other words, Mr. Holt claimed that Mr. Young and Mr. Fuller negligently failed to comply with the forfeiture statute. Mr. Holt's claims for negligence are brought under the forfeiture statute rather than brought under a common law claim for negligence. Thus, the claim for negligence falls squarely within the forfeiture statute of section 40-33-101, et seq. Accordingly, we affirm the trial court's decision dismissing Mr. Holt's claim for negligence.

Finally, the trial court dismissed Mr. Holt's claim for wrongful seizure under section 40-33-215 of the Tennessee Code. The trial court found that section 40-33-215 was inapplicable to the seizure of Mr. Holt's car. We agree. Section 40-33-215 provides that a person whose property has been seized under the forfeiture statute has a cause of action against the seizing agency if the seizing officer acted in bad faith. See TENN. CODE ANN. § 40-33-215 (1998). A person who prevails in an action for bad faith against a seizing agency is entitled to monetary damages limited to the rental value of the property similar to that which was seized for the period of time it was seized, attorney's fees, and court costs. See id. The Tennessee Legislature added section 40-33-215 to the forfeiture statute effective October 1, 1998. Section 40-33-215 is not applicable to the seizure in the case at bar because the seizure which occurred on March 18, 1996 predated the enactment of section 40-33-215. Section 40-33-215 may not form the basis for an action for damages connected with the seizure of Mr. Holt's car. Accordingly, we affirm the trial court's decision dismissing Mr. Holt's claim for wrongful seizure under section 40-33-215.

The only remaining relief provided a claimant under the forfeiture statute is a return of the seized property. See TENN. CODE ANN. § 40-33-108(5) (1997). On June 24, 2000, the Franklin

County Sheriff's Department released the seized car and personal possessions to Mrs. Holt. On April 4, 2001, Mr. Fuller filed a motion to supplement the record on appeal to consider as a post-judgment fact the return of the car and personal possessions. On April 23, 2001, this Court granted Mr. Fuller's motion to consider the post-judgment fact. Because Mr. Holt has already been provided the only remaining relief under forfeiture statute, return of the seized property, we find that Mr. Holt is not entitled to further relief under the forfeiture statute as a result of the seizure.

III. Conclusion

For the foregoing reasons, we affirm the trial court's decision. Costs of this appeal are taxed against the Appellant, Gary William Holt, for which execution may issue if necessary.

ALAN E. HIGHERS, JUDGE